

# Report on the Observatory consultation

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## 1. Orientation paper – introduction and summary

After initial exchanges with member states and following the drafting of an Observatory orientation paper, the Office launched a consultation with member and extension states, EUIPO, the epi, BusinessEurope and the European Commission on 4 February 2022. This was followed, on 9 February 2022, by the launch of a four-week public consultation on ep.org open for anyone to respond to.

The paper outlines the considerable progress made in nearly five decades of making patent information available under the contract inherent in any patent system. It also describes what the EPO has achieved and learnt from its shift of focus from collecting and providing patent information to becoming a recognised and internationally valued resource for patent knowledge.

The orientation paper recognises, however, that more can be done to leverage the vast experience and knowledge available at the EPO and in the European patent network (EPN) and deliver the greatest possible impact.

The paper highlights that working with stakeholders from across the innovation system is key to planning and delivering benefits long into the future. This will enable the EPO to ensure that future generations benefit from an EPO and a patent system that are effective and strong. To this end, the paper concludes that a suitable forum is required in which to debate future innovation, scientific and technological trends and their inherent interplay with the patent system.

A benchmarking study has confirmed that in the present innovation ecosystem, which is a complex and rich web of often very specialised players, such an inclusive platform does not yet exist. Bringing different views to the same platform and involving actors from outside existing subject-based and specialised fora will encourage debate that will draw strength from a plurality of views and convey a message that is easier to understand, is evidence-based and talks to policymakers and to society in general.

The EPO is proposing the creation of such a diverse, dynamic, catalytic platform: the Observatory on Patents and Technology. The Observatory will contribute to a deeper, more comprehensive understanding of important issues related to the future of innovation and technology and their impact on the patent system. In turn, this will help the EPO, the EPN and civil society to anticipate developments and address future challenges. The output of the Observatory will be to prompt reflection, discussion and debate based on analyses and studies, the subjects of which can be proposed by the stakeholders. When it comes to participation, the underlying ethos of the Observatory will be driven by expertise, yet accessible to all.

The paper outlines a potential structure for the Observatory's organisation, including different streams: technology and innovation, legal and innovation policies, diversity and transformation. In turn the organisation of the Observatory will aim to fulfil the guiding principles underpinning the project: a fact- and evidence-based approach, transparency, traceability of information generated in the discussions, diversity, inclusiveness, collaboration and subsidiarity.

Conceived as a dynamic platform, the Observatory will bring together the information and knowledge produced by the EPO, add value by consulting and prompting contributions from stakeholders and facilitate exchange with civil society. The Observatory will provide the EPO and its stakeholders with insights into developments in the innovation sector and patent landscape. Capitalising on this

knowledge, the EPO and its partners will be in a position to better respond to present challenges, anticipate change and take measures leading to economic, social and sustainability goals.

## **2. General information and statistics related to the public consultation**

This report aims to provide an overview of the feedback received by the Office from the consultation, outline the ideas and proposals submitted and further clarify some of the questions raised.

The EPO will continue to consult with member states before presenting its blueprint for the Observatory to the Administrative Council for its opinion in June 2022.

As a next step, the Office will exchange ideas with member states at the Annual Co-operation Day on 4 May.

To date, the EPO has received 43 replies to the consultation.

24 contributions originated from member states, epi, the European Commission and EUIPO. 19 contributions were received as part of the public consultation on the EPO website.

User associations, inventors, applicants, academics, patent information professionals and NGOs contributed to a wide range of views on the Observatory orientation paper.

The initiative of launching an Observatory dedicated to patents and technology, as proposed in the orientation paper, was unanimously welcomed. There was also a high level of interest in participating and actively contributing to the future activities of the EPO Observatory.

After a thorough evaluation of the feedback from EPO member states, epi, the European Commission and EUIPO, the following topics were identified:

- Involvement of stakeholders and role of national offices
- Avoiding duplication of existing initiatives or activities
- Organisational structure, governance and financial resources
- Subject proposals, selection and language choice

After analysing the contributions from the website consultation (i.e. user associations, inventors, applicants, academics, patent information professionals and NGOs), the following topics were identified:

- Participation
- Avoiding duplication
- Ensuring network diversity
- Guiding principles
- Outreach
- Quality of information

### **3. Topics covered by comments from EPO member states, epi, the European Commission and EUIPO**

1. Involvement of stakeholders and role of national offices
2. Avoiding duplication of existing initiatives or activities
3. Organisational structure, governance and financial resources
4. Subject proposals, selection and language choice

1. Involvement of stakeholders and role of national offices

- a. *Almost all member states responding to the consultation underlined the importance of close collaboration with other stakeholders (such as national patent offices, the PATLIB network, universities and technology transfer offices), with some contributions specifically inquiring about defining roles and responsibilities.*

Indeed, one of the main recurring themes of the orientation paper is the diversity of stakeholders the Observatory will bring together to ensure an inclusive and impactful exchange.

National patent offices, PATLIBs, universities and technology transfer offices, as identified by some member states in their feedback, will all be key stakeholders and play a fundamental role in the Observatory.

At the same time, the Observatory will expand outreach to include those who are currently not actively involved in reflections on innovation and the future of the patent system.

In line with its guiding principles, the Observatory will aim for maximum diversity and inclusion while ensuring collaboration, avoiding duplication of efforts and creating synergies with respect to subsidiarity (section 3.2 Guiding principles).

- b. *Some offices have offered or requested to be fully involved in the work of the Observatory.*

The national offices will play a decisive role in the activities of the Observatory. The new co-operation framework lays down the principles for closer co-operation. This framework has been formalised in the bilateral co-operation agreements (BCAs) which to date have been signed with 30 member and extension states. The Observatory will provide a further opportunity for NPOs to provide their expertise, and this can be reflected in the BCAs.

Member states will also have the opportunity to contribute to shaping the work of the Observatory through secondment of national experts. The Observatory will host many of the colleagues from member states who will be offered the chance to contribute to the work of the Office and the EPN.

Additional remarks on the role of member states in participating in the structures and activities of the Observatory are provided below in section 3.

- c. *The principles of complementarity and subsidiarity were often mentioned, as were transparency and collaboration as well as building a diverse and inclusive network with a broad outreach.*

These ideas are fully endorsed by the Office and are reflected in the guiding principles that form the basis for the dynamics driving the work of the Observatory. As outlined in section 3.2 of the orientation paper these are:

- Evidence-based approach drawing on clearly sourced data
- Transparency
- Diversity
- Inclusiveness
- Collaboration
- Creating synergies
- Avoiding duplication of effort
- Subsidiarity

- d. *Two offices stressed that the success of the Observatory will also depend on the inclusion of often under-represented stakeholders such as younger people, women and investors.*

Here too the feedback received is fully in line with the views reflected in the orientation paper, which highlights the diversity of stakeholders not only as one of the main features of the future Observatory, but also as a key element in maximising impact, simplifying the message and increasing outreach. To that end, the orientation paper proposes a dedicated stream (section 4.3.3 Stream 3: diversity and transformation), which will focus on addressing under-represented stakeholder groups and provide relevant insights in a way that makes them easier to understand and make the work of the Observatory accessible to a non-specialist audience.

## 2. Avoiding duplication of existing initiatives or activities

*Ten contributions advised against duplication of efforts. A few offices suggested that this initiative may add layers of IP information and risked competing with other service providers. One office stated that European and international structures must be aligned to avoid the multiplication of similar initiatives and projects. Furthermore, it was suggested that the Observatory's activities should be aligned with pre-existing initiatives through co-operation.*

In line with the guiding principles presented in section 3.2, the future Observatory aims to create a unique, ground breaking platform focusing on the interplay between innovation, technology and patents. The benchmarking study was the starting point for any considerations on the creation of the Observatory. The review and analysis of existing structures and initiatives identified a gap and highlighted the need for the Observatory – a dynamic and inclusive platform operating in an innovation-driven ecosystem, linking innovation, technology and patents. The Observatory will also add value by facilitating exchange and reaching out to those stakeholders who existing initiatives on national and European levels have so far failed to embrace. This will be ensured by a co-ordinated approach with the early involvement of IP ecosystem co-operation partners and formalised in existing and future co-operation instruments (such as MoUs and work plans as well as bilateral co-operation agreements).

The EPO will be able to capitalise on the experience and co-operation network it has built over the years and create a more expansive network under one umbrella.

Early definition of the subject areas in the biannual work plan, together with an agile structure enabling the Office to react quickly to topical issues, will ensure the network has impact while taking an evidence- and fact-based approach (sections 3.2 Guiding principles and 4.2 The structure).

### 3. Organisational structure, governance and financial resources

*Some offices would appreciate more clarity on the governance structure. One office indicated that national and regional offices should be part of the governance of the Observatory and that important decisions should be discussed by the Administrative Council (AC) and AC-related bodies. Explicit support was given to the proposal to report regularly to the Technical and Operational Support Committee (TOSC) on the Observatory. Interest was expressed in better understanding the proposed demarcation from other EPO directorates and supported networks (e.g. the European Patent Academy and PATLIB network) and evaluating synergies.*

As outlined in the position paper, the Observatory will be an internal department of the Office for which provision has been made in the budget of the Office since 2020. The Observatory will build on the expertise of existing departments to maximise synergies and make use of its vast and diverse internal knowledge pool (section 2.1 Assets and resources).

The set-up and the working method of the Observatory will follow the model recently adopted for the European Patent Academy and which was unanimously approved by member states.

A biannual work plan, on which the TOSC will be consulted, will ensure that planning is transparent and that the focus is on the most relevant patent- and innovation-related topics. Furthermore, the presentation of a yearly overview of Observatory activities to the TOSC and AC, together with a dedicated annex to the EPO's Annual Review, will provide for regular updates for EPO governing bodies and keep stakeholders and society at large informed about the impact of Observatory activities (sections 3.2 Guiding principles, 4.1.2 Outreach, 4.2 The Structure and 4.3 Start-up streams).

The creation of a board representing different stakeholders, including member states, and responsible for recommending studies, surveys and awareness-raising campaigns, will bring together the views of a multidisciplinary group of experts. Although the Observatory will be, by its nature, a virtual digital hub, a physical plenary is planned during the EPO's campus week and in-person events will be organised as and when the need arises.

### 4. Subject proposals, selection and language choice

*The importance of how topics are selected was highlighted, with references made to the international context, IP5, the global perspective (e.g. 3GPP), common European and EU priorities (e.g. EC guidelines) and also to technological focus at the national level. The selection of topics should be pertinent and made with care, favouring quality over quantity. Sustainability might be added as a further start-up stream.*

*It was suggested that national patent offices should play a role in choosing the subjects to be studied, as well as take part in the studies.*

*There were also concrete topic proposals, such as the uptake of intellectual property rights by SMEs and different industries, the role of patents within different innovation ecosystems and the Sustainable Development Goals. With regard to studies, there were proposals for a study on the Unitary Patent and its impact on Europe's competitiveness and for a study on legal and innovation policies closely connected to legal research.*

The biannual work plan will ensure a multidisciplinary approach and clearly defined topics. This plan will be prepared in broad consultation with Observatory stakeholders, including member states. As explained above, the TOSC will be consulted on the preparations for the biannual work plan. Additionally, the board representing different stakeholders may recommend studies, surveys and awareness-raising campaigns to be conducted by the Office (sections 4.1.2 Outreach and 4.2 The structure).

Furthermore, the Observatory's agile approach and lean structure will enable it to quickly react and to tackle topical issues where a contribution from the EPO and its stakeholders is requested. The Observatory will be well placed to address these topics by drawing on a network in which member states will play a key role.

The three start-up streams already provide a structure for disruptive debate and insightful discussions as well as for Observatory output.

New digital tools will support further forms of input such as calls for interest, calls for evidence and consultations, with the aim of encouraging participation and ensuring that everybody can contribute to the work of the Observatory and that every voice is heard (section 4.1.1 Sharing views and supporting active debate).

#### **4. Further topics covered by comments from user associations, inventors, applicants, academics, patent information professionals and NGOs**

5. Participation
6. Avoiding duplication
7. Ensuring network diversity
8. Guiding principles
9. Outreach
10. Quality of information

#### **5. Participation**

*A dozen respondents expressed interest in participating in future Observatory activities.*

The Office has noted the high level of interest in the work that will be performed by the Observatory and this confirms to the Office that the Observatory orientation paper is a step in the right direction towards an open, transparent and inclusive network where everyone has a voice.

## 6. Avoiding duplication

*Some highlighted duplication of effort and existing initiatives by academia and governmental institutions as well as the functions of internal departments such as Patent Information or the Chief Economist unit.*

As mentioned above, the idea behind the Observatory is to add value and to help ensure a sustainable future for the patent system, building on lessons learnt, involving IP and innovation stakeholders as well as under-represented actors, mobilising networks and leveraging internal expertise.

The biannual work plan will provide a framework for comprehensive planning and a co-ordinated approach for internal departments to follow in providing their expertise to and supporting the Observatory (sections 2.3 Lessons learnt and future opportunities, 3.2 Guiding principles, 4.1.2 Outreach and 4.2 The structure).

## 7. Ensuring network diversity

*The importance of building and strengthening a diverse and inclusive network of stakeholders and so bridging the gap between experts and non-experts was also stressed.*

*The involvement of a wide spectrum of the population, in particular women, minorities and younger people, was recommended, as was geographic balance in terms of countries and nationalities represented. An advisory board of, and for, young people to advise the EPO on youth-related issues and opportunities was proposed.*

Diversity is one of the guiding principles of the Observatory and is part of the EPO's DNA. One of the challenges identified is outreach to specific groups and professionals who are not familiar with the technicalities of the patent system or are not fully aware of its potential impact on them. Digital formats, new tools, better communication and increased focus on a non-specialist audience will contribute to increased diversity and inclusion, help reach out to younger generations and make complex content easier to understand.

The aim will be to make sophisticated patent-, technology-, innovation- and sustainability-related concepts more understandable and to enable access to a broader audience (sections 3.2 Guiding principles, 4.1.2 Outreach and 4.3.3 Stream 3: diversity and transformation).

## 8. Guiding principles

*The importance of including transparency among the guiding principles was welcomed. The need to reach a consensus on AI- and IP-related ethical questions was also highlighted.*

Among the guiding principles of the Observatory is the further opening up of the patent system and increased transparency. By creating a digital space open to all innovation stakeholders, the Observatory will showcase the full range of the EPO's patent knowledge activities, making them more accessible to a non-specialist audience with regular, clear reporting (section 3.2 Guiding principles).



The Observatory aims to become a centre for disruptive debate around an initial set of three topic-based streams (section 4.1.1 Sharing views and supporting active debate). AI-related topics and discussions will be mainly covered by stream 1 (technology intelligence stream), while IP-related topics ethical questions might be covered within stream 2 (legal and innovation policies) and eventually in stream 3 (diversity and transformation) (section 4.3 start-up streams).

## 9. Outreach

*Online dissemination of short instructional videos was considered the best way to reach the younger generation. In addition, online platforms should be used differently depending on the target age group. Different tools should be used for external communications such as monthly newsletters, online seminars and Instagram Live.*

*Respondents welcomed the possibility of having online meetings and the idea of making the Observatory a permanent forum for discussion on IP policies and related issues.*

One of the Observatory orientation paper lessons learnt is the need to enhance communication on innovation-related matters. To this end, the paper identified that new products and communication channels need to be further exploited in order to reach out to broader audiences with more targeted messaging.

Debate and digital participation will revolve around the three topic-based streams. The focus of stream 3 (diversity and transformation) will be to redesign content in multiple formats to address different stakeholder groups including younger generations.

New communication channels and tools will provide for more targeted messages to diverse and non-specialist audiences, broader outreach and enhanced innovation-related communication (sections 2.3 Lessons learnt and future opportunities, 3.2 Guiding principles, 4.1.1 Sharing views and supporting active debate, 4.1.2 Outreach, 4.2 The structure and 4.3.3 Stream 3: diversity and transformation).

## 10. Quality of information

*The EPO was encouraged to address "patent quality" as a further topic, especially within workstream 2 or 3. The quality and availability of patent information, and how crucial these are for patent information professionals, was also noted. Finally, it was suggested that the Observatory take a realistic approach and focus on priority issues to maximise the quality of information and debates, in line with the role and objectives of the EPO.*

One of the guiding principles of the Observatory is an evidence-based approach drawing on clearly sourced data. The Observatory will therefore contribute to the transformation of patent information into patent knowledge and a deeper understanding of the evolving needs of EPO stakeholders and the public in terms of data-based evidence and specific knowledge.

The insights gained from Observatory activities will in turn contribute to a better understanding of external stakeholder requirements for specific data-based insights and therefore to improved data quality.

Observatory activities will focus on three topical streams covered in a biannual work plan and aiming to add value to and positively impact the innovation ecosystem (sections 3 The Observatory: new horizons for patent knowledge, 3.2 Guiding principles, 4.2 The structure and 4.3 start-up streams).